

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MURRAY PACIFIC CORPORATION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 85-208

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice and order of civil penalty for the emission of fugitive dust in the Tacoma Tide Flats area, came on for formal hearing before the Pollution Control Hearings Board; Lawrence Faulk and Gayle Rothrock (presiding) on November 8, 1985, at Lacey, Washington. Cheri L. Davidson, court reporter, recorded the proceedings.

Appellant company appeared and was represented by attorney Steven L. Larson. Respondent Agency appeared and was represented by Keith D. McGoffin, attorney at law.

1 Witnesses were sworn and testified. Exhibits were admitted an
2 examined. Argument was heard. From the testimony, evidence, and
3 contentions of the parties the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent Puget Sound Air Pollution Control Agency (PSAPCA) has
7 filed with the Board a certified copy of Regulation I and all
8 amendments thereto, of which we take notice.

9 II

10 Respondent Agency is an activated air pollution control authority
11 under terms of chapter 70.94 RCW, empowered to implement programs of
12 air pollution prevention and control through regulatory means.

13 III

14 Appellant company, Murray Pacific Corporation, is a timber and
15 timber products firm engaged in log exports as part of its market.
16 The company leases log yard space from the Port of Tacoma along the
17 Blair Waterway at Lincoln Avenue in the Commencement Bay tide flats.

18 IV

19 Since 1971 the company has maintained some level of watering
20 program to keep dust down on the dirt and rock mixture ground surface
21 on active areas of the log yard.

22 The company uses a 1956 Peterbilt 3000 water truck which takes
23 seven minutes to load and thirteen minutes to spray-deposit the ground
24

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1 surface anytime the yard is dry and not freezing.¹

2 Approximately 150 log trucks per day unload in the yard, beginning
3 at 6:30 a.m. Up to nine log stackers can be operating in the 48-acre
4 yard. Additionally, changing bunks and removing reject logs are
5 notable activities in this yard operation. The water truck begins
6 work and remains working in priority areas throughout the day.

7 V

8 Respondent's inspector is very familiar with this tide flats
9 industrial area and monitors it regularly. Businesses near the log
10 yard have occasionally complained to the inspector about particulate
11 emissions from the direction of Murray Pacific Corporation when there
12 is a light wind from the west. The inspector has mentioned this in
13 the past to appellant company. PSAPCA formally notified the company
14 in 1984 that particulate dust control must be improved.

15 VI

16 On August 7, 1985, the inspector was on routine patrol in the area
17 and noted a tan-colored dust emission from the subject log yard. He
18 stopped and specifically observed airborne particulate caused by
19 equipment operating in the log yard for nearly 18 minutes out of the
20 23 minutes he made observation just before 8:30 a.m. He took
21 photographs during the observation.

22
23

24 1/ At times appellant company has attempted to purchase Tacoma water
25 from a hydrant off the property to keep the watering program going.

VII

The tide flats area, where appellant's operation is located, is a federally designated nonattainment area for suspended particulate matter. This means that the national ambient air quality standard for such material has not been attained and maintained there. The standard was established at a level selected for the protection of public health.

VIII

Respondent's inspector visited with an official of the log yard and noted the Peterbuilt water truck was at the north end of the yard and activity emitting dust was occurring at the south end of the yard. The company official was advised a violation of air pollution control regulations was occurring and the inspector presented him with Notice of Violation No. 20709.

IX

On September 16, 1985, following evaluation of the files and circumstances in the matter, respondent PSAPCA issued Notice and Order of Civil Penalty No. 6330 to Murray Pacific Corporation assessing a fine of \$250 for violation of Section 9.15 of Regulation I and WAC 173-400-040(8) for causing or allowing particulate matter to be handled, transported or stored in such a fashion as to effect emissions which are, or are likely to be, injurious to human health, plant or animal life, or property or which unreasonably interferes with the enjoyment of life and property.

X

Feeling aggrieved, appellant company appealed the penalty and notice to the Board on October 11, 1985.

XI

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these.

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters.
Chapters 43.21B and 70.94 RCW

II

The Legislature of the State of Washington has enacted policies in the Clean Air Act, Chapter 70.94 RCW, providing for the prevention and limitation of particulate emissions from air pollution sources, which sources must be kept under close control. In implementing the Act, the Washington Administrative Code, at WAC 173-400-040(8) provides that it shall be unlawful for an owner or operator of a source of fugitive dust fail to maintain and operate the source in a manner which would minimize emissions.

Murray Pacific Corporation did not, in these circumstances, show it responded to alerts to more adequately maintain and operate its activity at the log yard such that particulate dust emissions could be minimized.

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III

PSAPCA Regulation I, Section 9.15(c) states:

It shall be unlawful for any person to cause or allow:
(c) untreated open areas located within a private lot or roadway to be maintained in such a manner that particulate matter is emitted in sufficient quantities and of such characteristics and duration as is, or is likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. (Emphasis added).

This formulation parallels the definition of "air pollution" itself in the underlying statute, RCW 70.94.030(2), and encompasses not only emissions which cause demonstrable harm, but also emissions of a character and duration which create a harmful potential. See Kaiser Aluminum v. PCHB, 33 Wn.App. 352, 355, 654 P.2d 723 (1982).

The emissions in question were clearly visible and were observed for a substantially greater duration than would be required for an opacity violation. They were of a containment which is the subject of a national ambient air standard directed toward protection of human health. They occurred in an area where such standard is not being met.

Under these circumstances, we conclude that the emission were of a character and duration as is likely to be injurious. Therefore, appellant violated section 9.15 of Regulation I.

IV

The respondent agency provided the courtesy of advance warning about the need to better control dust at the subject log yard. Official notice of violation and imposition of civil penalty logically follows from that. The selected penalty of \$250 is reasonable in view

1 of the courtesy warning and the facts and circumstances of this case
2 and should be affirmed.

3 V

4 Any Finding of Fact which is deemed a Conclusion of Law is hereby
5 adopted as such.

6 From these Conclusions of Law the Board enters this
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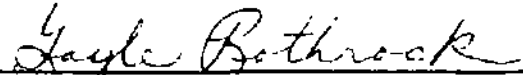
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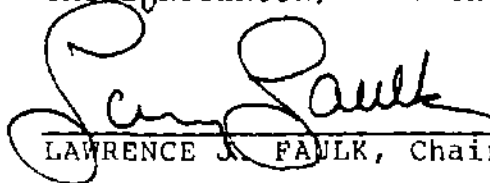
ORDER

Notice and Order of Civil Penalty No. 6330 for \$250 issued by
PSAPCA is affirmed.

DONE this 27th day of November, 1985.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman

 11/26/85
LAWRENCE J. FAULK, Chairman

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